

AMENDED IN ASSEMBLY APRIL 27, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2301

Introduced by Assembly Member Logue

February 18, 2010

~~An act to amend Section 51182 of the Government Code and to amend Section 4291 of the Public Resources Code, relating to fire protection. An act to add Section 4291.5 to the Public Resources Code, relating to fire protection.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2301, as amended, Logue. Fire protection: *public lands*: defensible space.

~~(1) Existing~~

~~Existing law requires that a person who owns, leases, controls, operates, or maintains an occupied dwelling or occupied structure in, upon, or adjoining a mountainous area, forest-covered land, brush-covered land, grass-covered land, or land that is covered with flammable material that is within a very high fire hazard severity zone, as designated by a local agency, to maintain a defensible space of 100 feet from each side and from the front and rear of the structure. Existing law requires that a person who owns, leases, controls, operates, or maintains a building or structure in, upon, or adjoining a mountainous area, forest-covered land, brush-covered land, grass-covered land, or land that is covered with flammable material, within a state responsibility area, to maintain a defensible space of 100 feet from each side and from the front and rear of the structure. An insurance company~~

that insures an occupied dwelling or occupied structure is authorized to require a greater distance, but this greater distance is prohibited from extending beyond the property line unless allowed by state law or a local ordinance, rule, or regulation.

~~This bill would provide that if the property is adjacent to state public lands, a state public lands management agency would be required to grant a right of entry boundary permit to a person subject to the greater distance requirement of the insurance company to enter land controlled by the state public lands management agency for purposes of undertaking defensible space work, as defined. The bill would impose conditions for purposes of this work and would exempt the defensible space work and the permit from the California Environmental Quality Act (CEQA) and the Z'berg-Nejedly Forest Practice Act of 1973. Because a lead agency would be required to determine the applicability of, and to give notice of, that exemption, this bill would create a state-mandated local program require a state public lands management agency, as defined, to establish a discretionary permitting or approval process containing specified elements, to consider an application from a person to maintain defensible space on state public lands if that person's defensible space requirement encroaches onto state public lands. The bill would authorize a state public lands management agency to impose conditions or limitations on maintenance of defensible space or that minimize any other adverse impact to the environment.~~

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 4291.5 is added to the Public Resources
- 2 Code, to read:
- 3 4291.5. (a) For the purposes of this section, the following
- 4 terms shall apply:
- 5 (1) "Qualified organization" means a homeowners association,
- 6 fire safe council, or other bona fide organization dedicated to fire

1 *protection and prevention, as determined by a state public lands*
2 *management agency.*

3 (2) *“State public lands” means lands owned in fee title by a*
4 *state public lands management agency.*

5 (3) *“State public lands management agency” means the*
6 *Department of Forestry and Fire Protection, Department of Parks*
7 *and Recreation, State Lands Commission, Department of*
8 *Transportation, or Department of Water Resources.*

9 (b) *Consistent with Section 51184 of the Government Code, a*
10 *state public lands management agency shall establish a*
11 *discretionary permitting and approval process to consider an*
12 *application from a person subject to subdivision (a) of Section*
13 *51182 of the Government Code or Section 4291 to maintain*
14 *defensible space on state public lands if that person’s defensible*
15 *space requirement encroaches onto state public lands.*

16 (c) *The permitting or approval process shall include, but not*
17 *be limited to, both of the following elements:*

18 (1) *A publicly available application posted on the agency’s*
19 *Internet Web site. The agency may require that reasonable*
20 *information be submitted with the application.*

21 (2) *Timelines for the review and consideration of the application.*
22 *At a minimum, an agency shall determine whether an application*
23 *is complete within 30 calendar days of receipt. Once deemed*
24 *complete, an agency shall consider and act on the application*
25 *within 45 days.*

26 (d) *A qualified organization acting on behalf of more than one*
27 *person subject to subdivision (a) of Section 51182 of the*
28 *Government Code or Section 4291 may apply for approval.*

29 (e) *The maintenance of the defensible space shall comply with*
30 *defensible space guidelines adopted by the State Board of Forestry*
31 *and Fire Protection or the Department of Parks and Recreation,*
32 *and Section 51184 of the Government Code.*

33 (f) *A state public lands management agency may require an*
34 *applicant pursuant to subdivision (b) to maintain liability or other*
35 *insurance or bonding in a form and amount determined by the*
36 *agency. The agency shall require an applicant to indemnify the*
37 *state from any and all actions or claims filed against the state as*
38 *a direct or indirect result of the issuance of a permit or approval.*

39 (g) *A state lands management agency may impose conditions*
40 *or limitations on the maintenance of defensible space pursuant to*

1 *Section 51184 of the Government Code or subdivision (i) of Section*
2 *15304 of Title 14 of the California Code of Regulations or that*
3 *minimize any other adverse impact to the environment, including,*
4 *but not limited to, wildlife habitat, water quality, and sensitive*
5 *species.*

6 *(h) In its review and consideration of an application pursuant*
7 *to subdivision (b), a state public lands management agency may*
8 *consider other flame ignition or flammability risk factors such as*
9 *fuel loading, slope, and the building materials of a structure or*
10 *dwelling, and the extent to which these factors may, individually*
11 *or cumulatively, present greater risks than vegetation or fuel on*
12 *adjacent state public lands.*

13 ~~SECTION 1. Section 51182 of the Government Code is~~
14 ~~amended to read:~~

15 ~~51182. (a) A person who owns, leases, controls, operates, or~~
16 ~~maintains an occupied dwelling or occupied structure in, upon, or~~
17 ~~adjoining a mountainous area, forest-covered land, brush-covered~~
18 ~~land, grass-covered land, or land that is covered with flammable~~
19 ~~material, which area or land is within a very high fire hazard~~
20 ~~severity zone designated by the local agency pursuant to Section~~
21 ~~51179, shall at all times do all of the following:~~

22 ~~(1) Maintain defensible space of 100 feet from each side and~~
23 ~~from the front and rear of the structure, but not beyond the property~~
24 ~~line except as provided in paragraph (2). The amount of fuel~~
25 ~~modification necessary shall take into account the flammability~~
26 ~~of the structure as affected by building material, building standards,~~
27 ~~location, and type of vegetation. Fuels shall be maintained in a~~
28 ~~condition so that a wildfire burning under average weather~~
29 ~~conditions would be unlikely to ignite the structure. This paragraph~~
30 ~~does not apply to single specimens of trees or other vegetation that~~
31 ~~are well-pruned and maintained so as to effectively manage fuels~~
32 ~~and not form a means of rapidly transmitting fire from other nearby~~
33 ~~vegetation to a structure or from a structure to other nearby~~
34 ~~vegetation. The intensity of fuels management may vary within~~
35 ~~the 100-foot perimeter of the structure, the most intense being~~
36 ~~within the first 30 feet around the structure. Consistent with fuels~~
37 ~~management objectives, steps should be taken to minimize erosion.~~

38 ~~(2) A greater distance than that required under paragraph (1)~~
39 ~~may be required by state law, local ordinance, rule, or regulation.~~
40 ~~Clearance beyond the property line may only be required if the~~

1 state law, local ordinance, rule, or regulation includes findings that
2 the clearing is necessary to significantly reduce the risk of
3 transmission of flame or heat sufficient to ignite the structure, and
4 there is no other feasible mitigation measure possible to reduce
5 the risk of ignition or spread of wildfire to the structure. Clearance
6 on adjacent property shall only be conducted following written
7 consent by the adjacent landowner.

8 (3) An insurance company that insures an occupied dwelling
9 or occupied structure may require a greater distance than that
10 required under paragraph (1) if a fire expert, designated by the fire
11 chief or fire official from the authority having jurisdiction, provides
12 findings that the clearing is necessary to significantly reduce the
13 risk of transmission of flame or heat sufficient to ignite the
14 structure, and there is no other feasible mitigation measure possible
15 to reduce the risk of ignition or spread of wildfire to the structure.
16 The greater distance may not be beyond the property line unless
17 either of the following apply:

18 (A) The greater distance is allowed by state law, local ordinance,
19 rule, or regulation.

20 (B) The property is adjacent to state public lands, in which case
21 all of the following shall apply:

22 (i) The state public lands management agency shall grant a right
23 of entry boundary permit to a person subject to this subparagraph
24 to enter land controlled by the state public lands management
25 agency for purposes of undertaking defensible space work. The
26 state public lands management agency shall also grant this right
27 of entry boundary permit to a homeowners' association, other type
28 of multidwelling agency, local regional fire safe council, or other
29 organized fire protection and prevention entity to undertake
30 defensible space work for all residents who are subject to this
31 subparagraph and who are represented by that entity or
32 organization. For purposes of this subparagraph, "defensible space
33 work" means the clearing that is necessary to significantly reduce
34 the risk of transmission of flame or heat sufficient to ignite the
35 structure.

36 (ii) The state shall require a person passing onto and conducting
37 defensible space work on state public lands to provide a liability
38 waiver, to ensure that the state is not liable for any injury incurred
39 during the work.

~~(iii) If the person subject to this section enters into a contract with a third party to conduct the defensible space work, the contractor shall maintain insurance, and if the resident is undertaking that work himself or herself, the resident shall maintain homeowners' or other appropriate insurance.~~

~~(iv) The person undertaking the defensible work on the public lands shall be over 18 years of age.~~

~~(v) The defensible space work conducted pursuant to this subparagraph, including the granting of a permit pursuant to this subparagraph, is exempt from Division 21 (commencing with Section 21000) of the Public Resources Code and Chapter 8 (commencing with Section 4511) of Division 4 of the Public Resources Code.~~

~~(4) Remove that portion of a tree that extends within 10 feet of the outlet of a chimney or stovepipe.~~

~~(5) Maintain a tree, shrub, or other plant adjacent to or overhanging a building free of dead or dying wood.~~

~~(6) Maintain the roof of a structure free of leaves, needles, or other vegetative materials.~~

~~(7) Prior to constructing a new dwelling or structure that will be occupied or rebuilding an occupied dwelling or occupied structure damaged by a fire in that zone, the construction or rebuilding of which requires a building permit, the owner shall obtain a certification from the local building official that the dwelling or structure, as proposed to be built, complies with all applicable state and local building standards, including those described in subdivision (b) of Section 51189, and shall provide a copy of the certification, upon request, to the insurer providing course of construction insurance coverage for the building or structure. Upon completion of the construction or rebuilding, the owner shall obtain from the local building official, a copy of the final inspection report that demonstrates that the dwelling or structure was constructed in compliance with all applicable state and local building standards, including those described in subdivision (b) of Section 51189, and shall provide a copy of the report, upon request, to the property insurance carrier that insures the dwelling or structure.~~

~~(b) A person is not required under this section to manage fuels on land if that person does not have the legal right to manage fuels; nor is a person required to enter upon or to alter property that is~~

1 owned by any other person without the consent of the owner of
2 the property.

3 (e) ~~The Department of Forestry and Fire Protection shall~~
4 ~~develop, periodically update, and post on its Internet Web site a~~
5 ~~guidance document on fuels management pursuant to this chapter.~~
6 ~~The guidance document shall include, but not be limited to,~~
7 ~~regionally appropriate vegetation management suggestions that~~
8 ~~preserve and restore native species, minimize erosion, minimize~~
9 ~~water consumption, and permit trees near homes for shade,~~
10 ~~aesthetics, and habitat; and suggestions to minimize or eliminate~~
11 ~~the risk of flammability of nonvegetative sources of combustion~~
12 ~~such as woodpiles, propane tanks, decks, and outdoor lawn~~
13 ~~furniture.~~

14 SEC. 2. ~~Section 4291 of the Public Resources Code is amended~~
15 ~~to read:~~

16 4291. (a) ~~A person who owns, leases, controls, operates, or~~
17 ~~maintains a building or structure in, upon, or adjoining a~~
18 ~~mountainous area, forest-covered lands, brush-covered lands,~~
19 ~~grass-covered lands, or land that is covered with flammable~~
20 ~~material, shall at all times do all of the following:~~

21 (1) ~~Maintain defensible space of 100 feet from each side and~~
22 ~~from the front and rear of the structure, but not beyond the property~~
23 ~~line except as provided in paragraph (2). The amount of fuel~~
24 ~~modification necessary shall take into account the flammability~~
25 ~~of the structure as affected by building material, building standards,~~
26 ~~location, and type of vegetation. Fuels shall be maintained in a~~
27 ~~condition so that a wildfire burning under average weather~~
28 ~~conditions would be unlikely to ignite the structure. This paragraph~~
29 ~~does not apply to single specimens of trees or other vegetation that~~
30 ~~are well-pruned and maintained so as to effectively manage fuels~~
31 ~~and not form a means of rapidly transmitting fire from other nearby~~
32 ~~vegetation to a structure or from a structure to other nearby~~
33 ~~vegetation. The intensity of fuels management may vary within~~
34 ~~the 100-foot perimeter of the structure, the most intense being~~
35 ~~within the first 30 feet around the structure. Consistent with fuels~~
36 ~~management objectives, steps should be taken to minimize erosion.~~
37 ~~For the purposes of this paragraph, "fuel" means any combustible~~
38 ~~material, including petroleum-based products and wildland fuels.~~

39 (2) ~~A greater distance than that required under paragraph (1)~~
40 ~~may be required by state law, local ordinance, rule, or regulation.~~

1 ~~Clearance beyond the property line may only be required if the~~
2 ~~state law, local ordinance, rule, or regulation includes findings that~~
3 ~~the clearing is necessary to significantly reduce the risk of~~
4 ~~transmission of flame or heat sufficient to ignite the structure, and~~
5 ~~there is no other feasible mitigation measure possible to reduce~~
6 ~~the risk of ignition or spread of wildfire to the structure. Clearance~~
7 ~~on adjacent property shall only be conducted following written~~
8 ~~consent by the adjacent landowner.~~

9 ~~(3) An insurance company that insures an occupied dwelling~~
10 ~~or occupied structure may require a greater distance than that~~
11 ~~required under paragraph (1) if a fire expert, designated by the~~
12 ~~director, provides findings that the clearing is necessary to~~
13 ~~significantly reduce the risk of transmission of flame or heat~~
14 ~~sufficient to ignite the structure, and there is no other feasible~~
15 ~~mitigation measure possible to reduce the risk of ignition or spread~~
16 ~~of wildfire to the structure. The greater distance may not be beyond~~
17 ~~the property line, unless either of the following apply:~~

18 ~~(A) The greater distance is allowed by state law, local ordinance,~~
19 ~~rule, or regulation.~~

20 ~~(B) The property is adjacent to state public lands, in which case~~
21 ~~all of the following shall apply:~~

22 ~~(i) The state public lands management agency shall grant a right~~
23 ~~of entry boundary permit to a person subject to this subparagraph~~
24 ~~to enter land controlled by the state public lands management~~
25 ~~agency for purposes of undertaking defensible space work. The~~
26 ~~state public lands management agency shall also grant a right of~~
27 ~~entry boundary permit to a homeowners' association, other type~~
28 ~~of multidwelling agency, local regional fire safe council, or other~~
29 ~~organized fire protection and prevention entity to undertake~~
30 ~~defensible space work for all residents who are subject to this~~
31 ~~subparagraph and who are represented by that entity or~~
32 ~~organization. For purposes of this subparagraph, "defensible space~~
33 ~~work" means the clearing that is necessary to significantly reduce~~
34 ~~the risk of transmission of flame or heat sufficient to ignite the~~
35 ~~structure.~~

36 ~~(ii) The state shall require a person passing onto and conducting~~
37 ~~defensible space work on state public lands to provide a liability~~
38 ~~waiver, to ensure that the state is not liable for an injury incurred~~
39 ~~during the work.~~

1 ~~(iii) If the person subject to this section enters into a contract~~
2 ~~with a third party to conduct the defensible space work, the~~
3 ~~contractor shall maintain insurance, and if the resident is~~
4 ~~undertaking the defensible space work himself or herself, the~~
5 ~~resident shall maintain homeowners' or other appropriate insurance.~~

6 ~~(iv) The person undertaking the defensible space work on the~~
7 ~~public lands shall be over 18 years of age.~~

8 ~~(v) The defensible space work conducted pursuant to this~~
9 ~~subparagraph, including the granting of a permit pursuant to this~~
10 ~~subparagraph, is exempt from Division 21 (commencing with~~
11 ~~Section 21000) and Chapter 8 (commencing with Section 4511).~~

12 ~~(4) Remove that portion of a tree that extends within 10 feet of~~
13 ~~the outlet of a chimney or stovepipe.~~

14 ~~(5) Maintain a tree, shrub, or other plant adjacent to or~~
15 ~~overhanging a building free of dead or dying wood.~~

16 ~~(6) Maintain the roof of a structure free of leaves, needles, or~~
17 ~~other vegetative materials.~~

18 ~~(7) Prior to constructing a new building or structure or rebuilding~~
19 ~~a building or structure damaged by a fire in an area subject to this~~
20 ~~section, the construction or rebuilding of which requires a building~~
21 ~~permit, the owner shall obtain a certification from the local building~~
22 ~~official that the dwelling or structure, as proposed to be built,~~
23 ~~complies with all applicable state and local building standards,~~
24 ~~including those described in subdivision (b) of Section 51189 of~~
25 ~~the Government Code, and shall provide a copy of the certification,~~
26 ~~upon request, to the insurer providing course of construction~~
27 ~~insurance coverage for the building or structure. Upon completion~~
28 ~~of the construction or rebuilding, the owner shall obtain from the~~
29 ~~local building official, a copy of the final inspection report that~~
30 ~~demonstrates that the dwelling or structure was constructed in~~
31 ~~compliance with all applicable state and local building standards,~~
32 ~~including those described in subdivision (b) of Section 51189 of~~
33 ~~the Government Code, and shall provide a copy of the report, upon~~
34 ~~request, to the property insurance carrier that insures the dwelling~~
35 ~~or structure.~~

36 ~~(b) A person is not required under this section to manage fuels~~
37 ~~on land if that person does not have the legal right to manage fuels,~~
38 ~~nor is a person required to enter upon or to alter property that is~~
39 ~~owned by any other person without the consent of the owner of~~
40 ~~the property.~~

~~(e) (1) Except as provided in Section 18930 of the Health and Safety Code, the director may adopt regulations exempting a structure with an exterior constructed entirely of nonflammable materials, or, conditioned upon the contents and composition of the structure, the director may vary the requirements respecting the removing or clearing away of flammable vegetation or other combustible growth with respect to the area surrounding those structures.~~

~~(2) An exemption or variance under paragraph (1) shall not apply unless and until the occupant of the structure, or if there is not an occupant, the owner of the structure, files with the department, in a form as the director shall prescribe, a written consent to the inspection of the interior and contents of the structure to ascertain whether this section and the regulations adopted under this section are complied with at all times.~~

~~(d) The director may authorize the removal of vegetation that is not consistent with the standards of this section. The director may prescribe a procedure for the removal of that vegetation and make the expense a lien upon the building, structure, or grounds, in the same manner that is applicable to a legislative body under Section 51186 of the Government Code.~~

~~(e) The Department of Forestry and Fire Protection shall develop, periodically update, and post on its Internet Web site a guidance document on fuels management pursuant to this chapter. The guidance document shall include, but not be limited to, regionally appropriate vegetation management suggestions that preserve and restore native species, minimize erosion, minimize water consumption, and permit trees near homes for shade, aesthetics, and habitat; and suggestions to minimize or eliminate the risk of flammability of nonvegetative sources of combustion such as woodpiles, propane tanks, decks, and outdoor lawn furniture.~~

~~(f) As used in this section, "person" means a private individual, organization, partnership, limited liability company, or corporation.~~

~~SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or~~

1 level of service mandated by this act, within the meaning of Section
2 17556 of the Government Code.

O